

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

COMMONWEALTH OF VIRGINIA,

v.

CRIMINAL NO. 102888
Hon. Jane Marum Roush

LEE BOYD MALVO,

Defendant

**MOTION TO REQUIRE THE COMMONWEALTH TO
PRODUCE EXCULPATORY EVIDENCE OF LEE MALVO
BEING "UNDER THE SPELL" OF DEFENDANT JOHN MUHAMMAD**

COMES NOW the defendant, Lee Boyd Malvo, by his co-counsels, and moves this Court to order that the Commonwealth produce exculpatory evidence of Lee Malvo being "under the spell" of defendant John Muhammad, pursuant to the previous order of this Court requiring disclosure of exculpatory evidence and the authority cited by counsel for Lee Malvo in his previous discovery motions. Please take note that this motion will be presented in this Court on July 24, 2003 at 2:00 P.M. In support of this motions co-counsels state:

1. Among the evidence collected and compiled by the various agencies working at the behest of the prosecution are 23 pages of police interviews of witnesses that have not been provided to the defense under this Court's order for the prosecution to provide exculpatory evidence to the defense.
2. To the knowledge and belief of counsel for the defendant, those pages relate to witness descriptions of Lee Malvo being "under the spell" of John Muhammad during the relevant times of their relationship.
3. That such evidence relates directly to the potential of false or exaggerated confession.

4. That such evidence bears directly upon the role and relative degrees of culpability of each of the two defendants.

5. That said evidence is exculpatory, probative and material to the issues in this prosecution.

6. That said witness interviews, the identity of each witness and the contents of each interview are covered by this Court's previous order governing exculpatory evidence.

WHEREFORE, the defendant, Lee Boyd Malvo, by counsel, respectfully moves this Court to enter an Order directing the Commonwealth to provide to the defense those interviews and related information as to the names and current addresses of the witnesses.

Respectfully submitted,

LEE BOYD MALVO

By LS/
Co-Counsel

and

By LS/
Co-Counsel

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CERTIFICATE OF SERVICE

We/I hereby certify that a true copy of the foregoing Motion/Memorandum was hand delivered to:

Robert F. Horan, Jr., Esquire
Commonwealth's Attorney
4110 Chain Bridge Road
Room 123
Fairfax, VA 22030

and the original was forwarded for filing to:

Hon. John T. Frey
Clerk
Fairfax County Circuit Court
Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, VA 22030-4009

and a true copy was forwarded to the

Hon. Jane Marum Roush
Judge
Fairfax County Circuit Court
Fairfax County Judicial Center
4110 Chain Bridge Road
Fairfax, VA 22030-4009

this 25th day of June, 2003.

/s/
Co-Counsel

/s/
Co-Counsel